

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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NORTHWEST MICHIGAN LAW FIRM, P.C.  
d/b/a GARRATT LAW FIRM, P.C. and  
GARRATT LAW FIRM,

UNPUBLISHED  
January 19, 2001

Plaintiffs-Appellants,

v

No. 216588  
Oakland Circuit Court  
LC No. 96-513232-CK

MAX ELBAZ, CAROL ELBAZ and ELKAR  
EQUITIES, INC.,

Defendants/Third-Party Plaintiffs-  
Appellees,

v

C. WILLIAM GARRATT,

Third-Party Defendant.

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Before: Markey, P.J., and Whitbeck and J. L. Martlew\*, JJ.

PER CURIAM.

Plaintiff Northwest Michigan Law Firm<sup>1</sup> appeals as of right from circuit court orders granting defendants' motion to set aside a consent judgment and dismissing the case. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

**I. Basic Facts And Procedural History**

Defendants retained the Northwest Michigan Law Firm to represent them in various legal matters and signed written retainer agreements that included consent to arbitrate disputes. After

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<sup>1</sup> Plaintiff is a single entity, Northwest Michigan Law Firm, which does business under the name Garratt Law Firm.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

a fee dispute arose between the parties, the Northwest Michigan Law Firm filed this action to compel arbitration. Because the trial court ruled that the retainer agreements were invalid, the Northwest Michigan Law Firm filed an amended complaint seeking payment of fees for services rendered under a variety of theories, none of which was predicated on the retainer agreements themselves. The parties ultimately entered into a settlement agreement under which defendants agreed to pay the Northwest Michigan Law Firm “\$12,000.00 plus interest pursuant to MCLA 600.6013” in three installments due July 10, 1997, January 10, 1998, and July 10, 1998. The parties also executed a consent judgment, which the Northwest Michigan Law Firm could file with the court if defendants breached the settlement agreement. The parties further stipulated to entry of an order of dismissal.

Shortly after the last payment came due, the Northwest Michigan Law Firm entered the consent judgment, which awarded it “\$35,820.62 plus costs and interest pursuant to MCL 600.6013,” less credit for payments made under the settlement agreement. Defendants promptly moved to set aside the judgment. The dispute centered on whether the third and final payment tendered was the full amount owed. The Northwest Michigan Law Firm claimed that the payment was less than what was owed because interest should have been calculated at twelve percent under MCL 600.6013(5); MSA 27A.6013(5), while defendants had calculated it at the fluctuating interest rate provided by MCL 600.6013(6); MSA 27A.6013(6). The trial court ruled that § 6013(5) did not apply, set aside the consent judgment, and entered an order of dismissal.

## II. Statutory Interest Rates

### A. Standard Of Review

“The determination whether a statutory provision applies to a given action is purely a legal question to be resolved by statutory interpretation and reviewed by this Court de novo.”<sup>2</sup>

### B. Statutory Provisions

Pursuant to MCL 600.6013(1); MSA 27A.6013(1), “[i]nterest shall be allowed on a money judgment recovered in a civil action as provided in this section.” Subsections (2) through (6) set the rate at which interest is calculated. Pursuant to subsection (5), interest is calculated at twelve percent “if a judgment is rendered on a written instrument.”<sup>3</sup> Pursuant to subsection (6), interest is calculated at a fluctuating rate that is less than twelve percent for other types of civil judgments.<sup>4</sup>

### C. The Settlement Agreement

Before the trial court entered the consent judgment, it had never entered an order or judgment requiring defendants to pay a sum of money to the Northwest Michigan Law Firm.

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<sup>2</sup> *Auto Club Ins Ass’n v State Farm Ins Cos*, 221 Mich App 154, 169; 561 NW2d 445 (1997).

<sup>3</sup> MCL 600.6013(5); MSA 27A.6013(5).

<sup>4</sup> MCL 600.6013(6); MSA 27A.6013(6).

Accordingly, we assume that the parties intended the settlement agreement, which provided for payment of interest under § 6013, to operate as the money judgment. Because § 6013(5) governs the calculation of “interest on a money judgment recovered in a civil action for a complaint ‘rendered on a written instrument,’”<sup>5</sup> the written instrument must be something underlying the judgment.

The Northwest Michigan Law Firm’s initial complaint was predicated on the two retainer agreements, but it did not seek payment based on those agreements. Rather, the Northwest Michigan Law Firm sought only to compel arbitration. The trial court’s order declaring those agreements invalid was set aside by the order of dismissal, which did not reinstate the original complaint because it had been superseded by the amended complaint.<sup>6</sup> The amended complaint contained four counts seeking payment of fees, none of which was expressly based on the written retainer agreements. The settlement agreement did not indicate that the \$12,000 was owed under the written retainer agreements or refer to those agreements at all. Because the settlement agreement resolved a civil action that did not expressly seek damages pursuant to a written instrument, we reject the Northwest Michigan Law Firm’s contention that the settlement agreement (judgment) constitutes a written instrument for purposes of § 6013(5). The trial court did not err in setting aside the consent judgment and dismissing the case.

Affirmed.

/s/ Jane E. Markey  
/s/ William C. Whitbeck  
/s/ Jeffrey L. Martlew

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<sup>5</sup> *Auto Club Ins Ass’n, supra*.

<sup>6</sup> MCR 2.118(A)(4).